



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042-8884-02]

RIN 0648-XB936

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined, based on consideration of the regulatory determination criteria regarding inseason adjustments, that the Atlantic bluefin tuna (BFT) daily retention limit that applies to Highly Migratory Species (HMS) Angling and HMS Charter/Headboat permitted vessels (when fishing recreationally for BFT) should be adjusted for the remainder of 2022. NMFS is adjusting the Angling category BFT daily retention limit from the default of one school, large school, or small medium BFT to: two school BFT and one large school/small medium BFT per vessel per day/trip for private vessels with HMS Angling permits; three school BFT and one large school/small medium BFT per vessel per day/trip for charter boat vessels with HMS Charter/Headboat permits when fishing recreationally; and six school BFT and two large school/small medium BFT per vessel per day/trip for headboat vessels with HMS Charter/Headboat permits when fishing recreationally. These retention limits are effective in all areas, except for the Gulf of Mexico, where targeted fishing for BFT is prohibited.

DATES: Effective May 6, 2022, through December 31, 2022.

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SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS is required under the MSA to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

As described in § 635.27(a), the current baseline U.S. BFT quota is 1,247.86 mt (not including the 25-mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The Angling category baseline quota is 232.4 mt. This baseline quota is further subdivided into subquotas by size class (see Table 1) as follows: 127.3 mt for school BFT, 99.8 mt for large school/small medium BFT, and 5.3 mt for large medium/giant BFT. Large school and small medium BFT traditionally have been managed as one size class, *i.e.*, a limit of one large school/small medium BFT (measuring 47 to less than 73 inches). Similarly, large medium and giant BFT traditionally have been managed as one size class that is also known as the “trophy” class. Currently, the default Angling category daily retention limit of one school, large school, or small medium BFT is in effect and applies to HMS Angling and HMS Charter/Headboat permitted vessels (when fishing

recreationally for BFT) (§ 635.23(b)(2)).

Table 1 -- BFT Size Classes

Size Class	Curved Fork Length
School	27 to less than 47 inches (68.5 to less than 119 cm)
Large school	47 to less than 59 inches (119 to less than 150 cm)
Small medium	59 to less than 73 inches (150 to less than 185 cm)
Large medium	73 to less than 81 inches (185 to less than 206 cm)
Giant	81 inches or greater (206 cm or greater)

Adjustment of Angling Category Daily Retention Limit

Under § 635.23(b)(3), NMFS may increase or decrease the Angling category retention limit for any size class of BFT after considering regulatory determination criteria under § 635.27(a)(8). Also under § 635.23(b)(3), recreational retention limits may be adjusted separately for specific vessel type, such as private vessels, headboats, or charter boats.

As discussed below, NMFS has considered all of the relevant determination criteria and their applicability to the change in the Angling category retention limit. After considering these criteria, NMFS has decided to adjust the Angling category retention limits as follows:

(1) For private vessels with HMS Angling permits, this action adjusts the limit upwards to two school BFT and one large school/small medium BFT per vessel per day/trip (*i.e.*, two BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches).

(2) For charter boat vessels with HMS Charter/Headboat permits, this action adjusts the limit upwards to three school BFT and one large school/small medium BFT

per vessel per day/trip when fishing recreationally for BFT (*i.e.*, three BFT measuring 27 to less than 47 inches, and one BFT measuring 47 to less than 73 inches).

(3) For headboat vessels with HMS Charter/Headboat permits, this action adjusts the limit upwards to six school BFT and two large school/small medium BFT per vessel per day/trip when fishing recreationally for BFT (*i.e.*, six BFT measuring 27 to less than 47 inches, and two BFT measuring 47 to less than 73 inches).

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a private vessel (fishing under the Angling category retention limit) takes a two-day trip or makes two trips in one day, the day/trip limit of two school BFT and one large school/small medium BFT applies and may not be exceeded upon landing.

Consideration of the Determination Criteria

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by recreational fishermen continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the Angling category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii)). Additionally, NMFS considered Angling category landings in 2020 and 2021, which were approximately 87 percent of the 232.4-mt annual Angling category quota in both 2020 and 2021, including landings of approximately 64 percent of the available school BFT quota in both 2020 and 2021, under the same daily retention limits as implemented in this action. Thus, absent retention limit adjustment, NMFS anticipates

that the available 2022 Angling category quota would not be harvested under the default retention limit.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP (§ 635.27(a)(8)(v) and (vi)). These retention limits would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations, (established in Recommendation 17-06 and maintained in Recommendation 20-06), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. While not yet implemented, NMFS anticipates these retention limits would also be consistent with ICCAT Recommendation 21-07. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. These retention limits are in line with these established management measures. It is also important that NMFS limit landings to the subquotas both to adhere to the FMP quota allocations and to ensure that landings are as consistent as possible with the pattern of fishing mortality (*e.g.*, fish caught at each age) that was assumed in the latest stock assessment, and these retention limits are consistent with those objectives.

Another principal consideration in setting the retention limit is the objective of providing opportunities to harvest the available Angling category quota without exceeding the available quota, based on the objectives of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to allow all permit categories a reasonable opportunity to harvest the available BFT quota allocations (related to § 635.27(a)(8)(x)).

NMFS considered input on recreational limits from the HMS Advisory Panel at its May and September 2021 meetings and that ICCAT recommendations and HMS

implementing regulations limit the allowance for landings of school bluefin tuna to 10 percent of the U.S. baseline quota (*i.e.*, 127.3 mt). The 2021 school BFT landings represented approximately 6 percent of the total U.S. quota for 2021, well under the ICCAT recommended 10-percent limit. NMFS is not setting higher school BFT limits than the adjustments listed due to the potential risk of exceeding the ICCAT tolerance limit on school BFT and other considerations, such as potential effort shifts to BFT fishing as a result of current recreational retention limits for New England groundfish and striped bass as well as high variability in bluefin tuna availability.

Given that the Angling category landings fell short of the available quota in 2020 and 2021, even with the retention limit adjustments, and considering the regulatory criteria above, NMFS has determined that the Angling category retention limits applicable to HMS Angling and HMS Charter/Headboat permitted vessels should be adjusted upwards from the default levels.

NMFS has also concluded that implementation of separate limits for private, charter boat, and headboat vessels is appropriate, recognizing the different nature, socio-economic needs, and recent landings results of the two components of the recreational BFT fishery. For example, charter operators historically have indicated that a retention limit greater than the default limit of one fish is vital to their ability to attract customers. In addition, Large Pelagics Survey estimates indicate that charter/headboat BFT landings averaged 31 percent of recent recreational landings for 2020 through 2021, with the remaining 69 percent landed by private vessels. NMFS has further concluded that a higher limit for headboats (than charter boats) is appropriate, given the limited number of headboats participating in the bluefin tuna fishery.

NMFS anticipates that the BFT daily retention limits in this action will result in landings during 2022 that would not exceed the available subquotas. Lower retention limits could result in substantial underharvest of the Angling category subquota, and

increasing the daily limits further may risk exceeding the available quota, contrary to the objectives of the 2006 Consolidated HMS FMP and amendments.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely through the mandatory landings and catch reports. HMS Angling and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov*, using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.). Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments or closures are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access *hmspermits.noaa.gov*, for updates on quota monitoring and inseason adjustments.

HMS Angling and HMS Charter/Headboat permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the “Careful Catch and Release” brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure>.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order

12866.

The Assistant Administrator (AA) for NMFS finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the daily retention limit for the remainder of 2022 at this time is impracticable. Based on available BFT quotas, fishery performance in recent years, and the availability of BFT on the fishing grounds, immediate adjustment to the Angling category BFT daily retention limit from the default levels is warranted to allow fishermen to take advantage of the availability of fish and of quota. NMFS could not have proposed these actions earlier, as it needed to consider and respond to updated landings data from the 2021 Angling category. If NMFS was to offer a public comment period now, after having appropriately considered those data, it could preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria, and/or could result in selection of a retention limit inappropriately high or low for the amount of quota available for the period.

Fisheries under the Angling category daily retention limit are currently underway and thus prior notice would be contrary to the public interest. Delays in increasing daily recreational BFT retention limit would adversely affect those HMS Angling and HMS Charter/Headboat permitted vessels that would otherwise have an opportunity to harvest more than the default retention limit of one school, large school, or small medium BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Analysis of available data shows that adjustment to the BFT daily retention limit from the

default level would result in minimal risks of exceeding the ICCAT-allocated quota.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: April 29, 2022

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[FR Doc. 2022-09573 Filed: 5/3/2022 8:45 am; Publication Date: 5/4/2022]